

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISIONFILED
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U.S. DISTRICT COURT
N.D. OF ALABAMA

PAMELA SHIRLEY BROWNING,)
)
PLAINTIFF,)
)
V.)
)
WAL-MART STORES, INC.,)
)
DEFENDANT.)

CIVIL NO. :
CV-05-BE-2003-W**DEFENDANT'S MOTION TO SEVER AND REMAND**

COMES NOW Defendant, Wal-Mart Stores East, LP (improperly identified in the Complaint as Wal-Mart Stores, Inc.), and pursuant to 28 U.S.C. §1445(c), and moves this Court to sever and remand Count I of Plaintiff's Complaint, on the following grounds:

1. This case, styled *Pamela Shirley Browning v. Wal-Mart Stores, Inc.*, was filed on or about August 22, 2005, in the Circuit Court of Bibb County, Alabama, bearing Civil Action No. CV 05-129 on the docket of that Court. In Count I of Plaintiff's Complaint, she stated a claim for benefits under the Alabama Workers' Compensation Act. In Count II, Plaintiff asserted a tort of outrage claim.
2. Defendant has filed a Notice of Removal contemporaneously herewith.
3. Plaintiff's claim for benefits under the Alabama Workers' Compensation Act is a non-jury issue matter that should be decided in State court. According to 28 U.S.C. § 1445(c), "a civil action in any State court arising under the workman's compensation laws of such State may not be removed to any district court of the United States." *See also Fed Reserve Bank of Atlanta v. Thomas*, 220 F.3d 1235 (11th Cir. 2000).

4. Under Alabama state law, "the usual procedure where a claimant has filed a complaint seeking both workmen's compensation and tort relief is for these two claims to be severed." *Raines v. Browning-Ferris Ind.*, 638 So. 2d 1334, 1337 (Ala. Civ. App. 1993).

5. Accordingly, Defendant respectfully requests this Court to sever Count I of Plaintiff's Complaint and to enter an Order remanding it back to State court.

Respectfully submitted this the 21st day of September, 2005.



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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing pleading upon all counsel of record in this cause by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 21st day of September, 2005:

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Of Counsel